

No. 14593

Supreme Court of Illinois

Eyste^R~~x~~

vs.

Hatheway et al

STATE OF ILLINOIS,
SUPREME COURT,

THIRD GRAND DIVISION.

Wester vs. Hatteray,

No.

203 . 50

J. W. Middleton & Co., Stationers, 126 Lake St.

1864

503

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

SAMUEL EYSTER

vs.

ELIAS C. HATHEWAY,

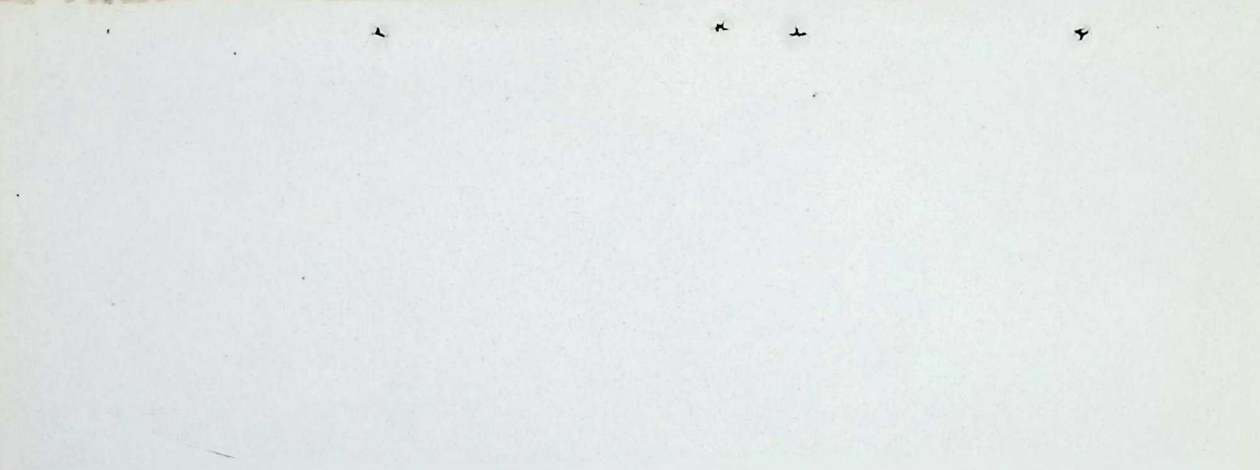
JOSEPH C. HATHEWAY.

} *Appeal from La Salle.*

ABSTRACT OF THE RECORD.

Points and authorities

Samuel Eyster, the appellant, who was complainant in the court below, filed his bill in chancery, in the circuit court of La Salle county, on the 5th day of August, A. D. 1862, alleging



which he traded with said Joseph C. Hatheway for said note and mortgage, and at the time knew nothing about any previous contract or business of Joseph C. Hatheway with said Eyster in relation to said note and mortgage.

- 22 Denies, substantially, that Joseph C. Hatheway solicited a new mortgage from Eyster and wife for the purpose of obtaining a release of her rights under the homestead exemption laws of this state.

That he knows nothing about the note and trust deed, dated 26th January, 1859; but is informed, and believes, that the statement that J. C. Hatheway applied to Eyster before the same were due, to get a new mortgage, is untrue. That by its terms (the trust deed) the interest was payable semi-annually. Eyster was to pay taxes; that he failed to pay both, and thereby the mortgage debt became due at the end of six months after date. The taxes of 1859, assessed by the city of Ottawa, were not paid when due. The premises were sold and J. C. Hatheway bought up the certificate of purchase from Wm. H. L. Wallace, and had the same cancelled.

The answer makes the trust deed a part thereof, but does not attach copy.

By terms of trust deed, the whole debt became due upon such default; and upon information and belief says, Joseph C. Hatheway did demand payment of said indebtedness, or a new security. That he has advertised said premises for sale as alleged.

That said note was given for purchase money, and refers to affidavits of Wm. Reddick and Joseph C. Hatheway, and makes them part of answer. Their affidavits are embodied in the bill of exceptions.

- 23 That said Sarah Eyster did release her rights under the homestead laws; and affidavit of T. R. Courtney is allowed and made a part of answer.

The answer is sworn to by Elias C. Hatheway, and stands, by agreement, as answer for Joseph C. Hatheway also.

Affidavit of Thomas R. Courtney.

23 That, on 24th December, 1860, he took mortgage, copy of which is set out in bill—he being notary public—and called at Eyster's house. His wife and two daughters were all that were present. That he informed the wife that he had come to take her acknowledgement to the mortgage. Thereupon he commenced reading it to her. She objected; said she understood it all, and was, apparently, anxious to acknowledge it. He then told her it was his duty, as a sworn officer, to explain to her its contents and meaning, and did so to the best of his ability; and did actually read to her that part of the certificate of acknowledgement which relates to her.

24 That the matter of the mortgage, containing a power of sale and release of homestead, was freely talked of and explained to her, and she seemed to understand the same, and be ready and willing to acknowledge the same, and release her dower and homestead rights.

Replication.

25 Complainant Eyster on the 11th February, 1863, filed general replication.

26 At June term, A. D. 1863, a trial was had on motion to dissolve the injunction, and the motion to dissolve was sustained, and complainant's bill was dismissed at his costs.

27 Complainant prays an appeal, which is granted upon condition of his filing, in 20 days, an appeal bond in penal sum of four hundred dollars, with either Jacob Lininger, James W. Ball, or Thomas Osborn as surity. Same time is allowed to settle and file bill of exceptions.

Bill of Exceptions.

28 Shows the following agreement. That the said complainant, Eyster, and his family, (consisting of his wife and two daughters,) of which he was the head, resided upon the premises described in the mortgage, in a dwelling house thereon, at the time, before, and since the execution of the mortgage, as a home.

That the premises were about to be sold as alleged in bill.

The complainant, then, to maintain the issues on his part, read in evidence the answer of Elias C. Hatheway, and affidavit of Joseph C. Hatheway, for the purpose only of showing the consideration of the note. Complainant then called Savilla Eyster, who testified as follows:

- 29 *Savilla S. Eyster*.—Am a daughter of Samuel Eyster. Reside at Ottawa. My father lives near Samuel Raymond's. He occupies it as a homestead. I have a sister and a mother living. There is a dwelling house on premises. Cannot give description of property. It is situated on the corner of Clay and Webster streets. He has lived there six years last fall, and did on the 5th day of December, A. D. 1860. They made it their home at that time.

John F. Nash testified for complainant as follows:

Know the complainant, and where he resides. (Mortgage from Eyster to Hatheway shown him.) Think it is the property on which he lives. Know that he lives on the premises in controversy. Should think the property worth about \$1200. I suppose the complainant is the head of the family, and resides there as such.

- 30 *Cross-Ex.*—If the house is thoroughly finished according to outside appearances, the premises would be worth \$1500.

Julius Avery testified for complainant as follows:

(Note and mortgage shown him.) It is the mortgage of the same property on which a sale was to take place.

Complainant here rests.

Defendants then introduced mortgage, date, December 5th, 1860, and note for \$889.17, and assignment of mortgage and note to Elias C. Hatheway, by Joseph C. Hatheway, December 6th, 1860.

- 46 Defendants then offer in evidence affidavit of Wm. Reddick.

- 30 *Savilla Eyster*, recalled on part of complainant.

I was present when the mortgage was executed by my mother.

(All the following testimony subject to exceptions.)

31 Sabina, my sister, was also present. I was present when Mr. Courtney first came into the house, and was there while he staid in the house. He came to the house in the morning. Mother was sick. He rapped on the door, and I went to it. He spoke and said he brought a mortgage to renew the old one. I asked him to read it, and asked mother if she had read the old one. She said she had read it, and she then signed the one Mr. Courtney brought. He asked her if she was willing to sign it. She said she was. Before she signed it I wanted my sister to go after father, and he said there was no use of that. He did not say a word about mother having a homestead right, nor any thing of the kind. If he had said any thing of the kind, I should have heard it, because I was in the room all the time. He sat at the table, and I sat near him at the same table. He was there from ten to fifteen minutes.

Cross-Ex.—Mother had first got up when he came, and was sitting in a rocking chair. I did not pass out and in the room while he (Courtney) was there. He did not ask mother to hear the mortgage read. He said it was the same as the old one. Mother said she had heard the old one read. Mother did not say she did not want to hear it read, nor that she did want to. She said she had heard the old one read, and I proposed to have this one read, and Mr. Courtney said there was no use of reading it. Mr. Courtney did not say to her that it was his duty to explain the mortgage to her, and to read it. He did not say that he was a sworn officer, and that it was his duty to explain it to her. He did not say that he could not take her acknowledgment without reading it to her, and that it was his duty to explain it. I got the ink and pen to write with at the request of my mother. I did not have to go out of the room to get it. It was on the window. Prior to that morning I had never heard father and mother say any thing about this mortgage. That was the reason why I wanted to hear it read. Mother did not express any unwillingness to sign the mortgage. She said but a few words about it. It was to be a newly dated mortgage, the

same as the old one. Have never talked with mother and father about this suit, nor with any one before or since the commencement of this suit. Never had any conversation about it with any of the family. Father came into the house and asked me if I would be willing to swear as to what Courtney said. This was just before the bill was filed. I went up with father to Cameron's office after he asked me that question. I am as confident
 33 as that I am here now, that Courtney did not read the acknowledgement to mother. It was a very cold morning when Mr. Courtney came down to our house.

Direct Resumed.—I did not hear father and mother say any thing about the mortgage before this bill was filed. Am aged 28 years.

Sabina Eyster, called by complainant.

I am 15 years old. Was present at the time Mr. Courtney was at our house as spoken of by my sister. I heard the conversation. Savilla (Flavilla) asked Courtney to read the mortgage. He said it was of no use, as it was the same as the old one. My sister told me I had better go after father. Courtney said there was no use of that. Mr. Courtney wrote mother's name, and she signed the mark.

He did not say any thing to her about any homestead right. He did not ask her any questions about signing the mortgage. I was setting at the breakfast table when he came, and remained there during his stay. If there had been any thing said by him to mother about a homestead, I would have heard it. He did not say any thing as to what constituted a homestead. He was in the room from ten to fifteen minutes. My mother was sick. She sat in a rocking chair all the time he was there.

Cross-Ex.—They were there ten or fifteen minutes. He came to the door, and mother came in and sat down, and that took
 34 some of the time. It was about two minutes after Courtney came in, that mother came out. He said he had brought a new mortgage, the same as the old one. There was nothing read or said about dower or homestead whatever. He did not ask her

whether she was willing to execute the mortgage or not. She did not say any thing about it.

34 *Thomas R. Courtney* testified for the defendants as follows:

Am a Notary Public; know complainant and his wife; (mortgage shown him) have seen mortgage; the acknowledgment thereon was taken by me. About the latter part of December I called at the house of Eyster at a time appointed by him when I should call, and I went into the house and was invited to take a seat. I notified Mrs. Eyster that I had called to take her acknowledgment to a new mortgage which Eyster was giving to Hatheway, instead of the old mortgage. There was a rambling conversation between Mrs. Eyster and myself about indebtedness, and before signing I informed the lady that it was a mortgage for the sum of \$887.19, and read the description of the property therein described, and told her I supposed it was the same place where they were living, and that it was what is called a short mortgage, with power to sell in thirty days. I remember distinctly that I wanted to have her understand what it was, and informed her what a short mortgage was, (it was a mixture of reading and conversation,) and by this mortgage that she surrendered the right of homestead exemption, *but did not explain to her her rights in regard to homestead exemption*, for I did not know at that time that it was my duty, and afterwards I said it was my duty to explain those things, with a *mixture of conversation* and reading. I explained to her that part of the mortgage setting out the power of sale and the homestead exemption. I asked the lady after she signed whether she did the act willingly, freely and voluntarily, and without the compulsion of her husband. I then took the instrument up and asked her to excuse me for asking such questions, because, being a sworn officer, it was my duty to ask such questions, *and read over the last part of the acknowledgment as my excuse*. There was some conversation about the old mortgage, but I was desirous of confining the conversation to the new mortgage. I think there was some desire to hear the old mortgage read, and I stated that it was useless, or some such expression. I think it was suggested to send for Mr. Eyster, and I remarked that Mr. Eyster had already signed the new mortgage, and that it was not necessary as far as this was concerned. The lady appeared satisfied that she understood it all.

36 She said it was not necessary to read the whole mortgage, that she understood it all. I stated to her that, being a sworn officer, I thought it was my duty to inform her fully of the nature of the instrument before signing. There was nothing said in relation to having this mortgage read over. I was not requested to read over the new mortgage.

Neither of his daughters requested me to read it over. I commenced reading the mortgage, and the lady said it was not necessary. Somebody made the remark that they supposed it was like the old mortgage, and that there might be no misunderstanding was the reason why I was so precise in stating that the mortgage was a short mortgage, with a right to sell after thirty days' public notice, and contained a relinquishment of the homestead exemption.

Cross-Examined.—I went down to Mr. Eyster's at a time named by him. Mortgage in my hand-writing.

37 *Ques.* State whether or not Joseph C. Hatheway came to you and stated that he had a trust deed, signed by Eyster and wife, conveying the property in question to him or for his benefit, which did not release the homestead, and that he wanted you to draft a new mortgage which would release homestead, or language to that effect, about the time this mortgage was executed. (Objected to by defendants. Objection sustained by court, and complainant excepts.)

There was somebody suggested I should read the old mortgage. I do not remember that the young lady asked me to read the new mortgage. She may have done so and I not remember it. I should not have taken any notice of it. I knew that there was an old instrument, but did not know the kind. I do not remember that I had the old mortgage with me. I promised Eyster, in a friendly manner, that I would not give the new mortgage to Joseph Hatheway until he surrendered up the old one.

I do not remember that I ever surrendered up the trust deed to Hatheway. I think I have not got it in my possession. The

impression is that I did surrender it up, but cannot recall the time or place.

I do not think I am mistaken in there being a request for me to read the old mortgage. I had no interest in deceiving the parties. I am friendly to them.

Ques. State whether or not Joseph C. Hatheway asked you to go down to Mrs. Eyster's and get her to sign this mortgage for the express purpose of obtaining a release of the homestead, and for no other purpose.

38 I do not think he did. My recollection is that he did not. He selected the instrument and asked me to fill it up. I don't think that he (Hatheway) said anything about the old deed having any release of the homestead. The reason why I had fears that Mrs. Eyster would not sign the mortgage was the delay in which Mr. Eyster indulged in naming a day for me to go down. I think I may have had two interviews with Mr. Eyster on the subject.

I only stated to Mrs. Eyster, in conversational manner, that this new mortgage released the right of homestead exemption. I did not explain to her the nature of her rights in regard to homestead exemption. I did not know that was my duty.

Direct resumed.—Question. State whether or not you understood the law and decisions of the supreme court in regard to a woman's rights under the homestead exemption law. (Objected to by complainant, and objection sustained.)

B. C. Cook, for defendants, called.

I am an attorney at law.

39 *Ques.* State whether or not, on the 24th day of December, 1860, you could have explained to a married woman her rights under the homestead exemption law, as construed by the supreme court. (Objected to by complainant, and objection sustained.)

- 39 *Ques.* State whether or not you think that an accountant not acquainted with the law as a profession was competent to explain to a married woman, on the 24th day of December, 1860, her rights under the homestead exemption law, as construed by the supreme court. (Objected to by complainant, and objection sustained.)

This was all the oral testimony.

Defendants then offered and read in evidence the following note:

- 40 \$889.17. OTTAWA, Illinois, 5th December, 1860.
Six months after date, for value received, I promise to pay to the order of Joseph C. Hatheway the sum of eight hundred eighty-nine dollars and seventeen cents, with interest at ten per cent. per annum, and if not paid at maturity, I hereby agree to pay as liquidated damages on the sum then due one and one-half per cent. per month until paid.

SAMUEL EYSTER.

- 41 They then offered and read in evidence the mortgage. That portion of the instrument referring to the homestead is as follows:

"And the said party of the first part hereby specially covenants and agrees to and with said party of the second part, to waive their right of equity of redemption and all right in said premises by virtue of the homestead exemption laws of this State, now in force, or which may be in force in this State, and further agree that they will neither assert or claim any such right on the sale of the property mentioned herein by virtue of this mortgage."

The certificate of acknowledgment thereto is as follows:

"STATE OF ILLINOIS, }
COUNTY OF LA SALLE, } ss.

"I, Thomas R. Courtney, Notary Public for the city of Ottawa, in and for said county in the State aforesaid, do hereby certify that Samuel Eyster and Sarah Eyster, his wife, personally known to me as the persons whose names are subscribed to the

above mortgage, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

"And the said Sarah Eyster, wife of the said Samuel Eyster, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all rights under the homestead exemption laws of this state, to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same. Given under my hand this twenty-fourth day of December, 1860.

"T. R. COURTNEY, Notary Public."

Complainant objects to the reading of mortgage in evidence. The court overrules the objections, and complainant excepts.

- 43 Defendant then read in evidence the answer of Elias C. Hatheway.

Affidavit of Wm. Reddick.

- 46 The defendants then read in evidence the affidavit of William Reddick, which is substantially as follows:

That on 26th January, 1859, he conveyed premises in question to Eyster. That Eyster borrowed \$600 of Joseph C. Hatheway on that day to make the last payment of the purchase money for the premises. Thinks that Hatheway, at Eyster's request, paid him (Reddick) the money.

Affidavit of Joseph C. Hatheway.

- 47 Defendants then read in evidence affidavit of Joseph C. Hatheway, which is in substance as follows:

"That he negotiated the loan mentioned in complainant's bill. That Eyster said he wanted the money to make the last

47 payment of the purchase money for the premises in question to William Reddick, and that the money was used for that purpose on 26th January, 1859. That William Reddick filled out the trust deed mentioned, for Eyster to sign, and at same time executed and delivered to Eyster his deed for the premises; and that Hatheway, upon receipt of trust deed and note, dated January 26, 1859, delivered to Reddick the amount loaned, according to the arrangement with Eyster, and that Eyster did not handle one dollar of the money.

Argues from these facts that said money was purchase money. That Elias C. Hatheway is a *bona fide* holder of note and mortgage, and that he, Joseph C. Hatheway, has no interest in the same.

This was all the evidence in the case.

The court rendered a decree dissolving said injunction, and dismissing complainant's bill; to the rendition of which decree said complainant then and there objected.

The court overruled said objection, and complainant excepts.

ASSIGNMENT OF ERRORS.

The court erred in rendering a decree dissolving said injunction.

The court erred in rendering a decree dismissing complainant's bill.

The court erred in refusing to allow the witness for defendants, Thomas R. Courtney, to answer the first interrogatory propounded by complainant on cross-examination, page 37 of record.

The decree is not signed by the judge.

D H Cameron
att'y for appellant

PONITS AND AUTHORITIES.

The certificate of acknowledgment of the mortgage is not sufficient to pass the interest of the wife to the homestead, in that it does not show that "*she was informed of her rights under the act.*"

Van Zant *vs* Van Zant, 23 Ill. 541.

It is competent to contradict the recitals in the acknowledgment of a married woman; and proof *aliunde* may be introduced showing that the same are not true.

Louden *vs*. Blythe, 16 Penn. (4 Harris,) 532.
Schroder *vs*. Jamison, 3 Whart. 457.
Swift *et al vs*. Castle, 23 Ills. 242.

Elias C. Hatheway, by the assignment of the mortgage, took only an equitable interest, and is therefore chargeable with notice of all equities.

Complainant and family were in possession at time of assignment, and he is thereby also chargeable with notice of the rights of the wife to the homestead.

The decree should have been signed by the judge.

The two daughters of the complainant both swear positively that Courtney did not say any thing to Mrs. Eyster about her homestead rights.

D. F. Cameron
att'y for appellant

203 50

SUPREME COURT,

Third Grand Division,

APRIL TERM THREOT, A. D. 1864.

SAMUEL EYSTER

vs.

ELIAS C. HATHEWAY,

JOSEPH C. HATHEWAY.

} Appeal from La Salle.

ABSTRACT.

Points & Authorities

D. F. CAMERON,

Attorney for Appellant.

Filed Apr 22 1864

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

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SAMUEL EYSTER

vs.
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APPELLEE'S BRIEF.

Pages 12 and 13 of the abstract given in full the language of the mortgage and acknowledgment in reference to the homestead.

The acknowledgment says that the officers *made known the contents and meaning* of the mortgage.

The language in the body of the mortgage and in the acknowledgment conforms strictly with the statute and the decisions of the Supreme court.

It is insisted by the appellant that the officer taking the acknowledgment shall explain to the wife *all her legal rights* under the Homestead act, and that the sentence "*that he fully informed her of her rights under the act,*" as expressed in the case of *Vanzant vs. Vanzant*, 23 Ill. 542, should be incorporated in the certificate of acknowledgment. There are no such words in the statute, and we do not think the court meant to lay down a *formula* for an acknowledgment.

A large amount of the conveyancing of this state is done by justices of the peace, and they and notaries take most all acknowledgments. It is a part of the institutions of this country and as old as the common law. Is it to be expected that every country justice should be able to give an erudite lecture on the legal rights of a *feme covert*, to every woman who signs a mortgage, when the very best legal talent of the state have different opinions as to what acts are necessary to be done to alienate those rights? Every man and woman are supposed to know what the law is and their rights and obligations under it, idiots and lunatics excepted. The language in the above opinion is used in giving the reasons of the court for the decision in that case, and could not have been intended as a *sine qua non* in every certificate.

We venture to say that there is not upon record a single deed or mortgage, wherein the certificate states anything whatever about the *legal rights* of the wife being explained to her by the officer.

The homestead act has been of late so often before the court, that we do not deem it necessary to quote the decisions.

II.

There is no allegation in the bill charging either fraud, coercion, or duress. Without these charges no parol testimony is admissible.

Jamison vs. Jamison, 3 Whart. 457.

The case of Swift vs. Castle, 23 Ill. 209, only refers to absolute fraud or coercion.

The testimony of Courtney is full, and explains the whole conversation. Abst. page 9; 30 of record.

GRAY, AVERY & BUSHNELL.

O. Eyster -

E. C. No. 10 Arthur, 1

Appellate Body

Filed May 5, 1864

J. L. McDonald

SUPREME COURT OF ILLINOIS,

THIRD, GRAND DIVISION

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Filed May 5, 1864
J. Leland M.

GRAY, V. ALBANY & BUSHNETT

Attention. Vol. page 3; 30 of record.

The testimony of Gorman is full, and explains the whole case.

into land or cotton.

The case of *Smith vs. Cargo*, 23 Ill. 208, only refers to the

admission.

claim of distress.

There is no objection in the bill charging either party with

that we do not deem it necessary to prove the decision.

The parties are in possession of the land before the court.

Complaining Showeth unto your Honor your Orator Samuel Eyster, that for a long time prior to the 5th day of December A.D. 1860. Your Orator was the owner in fee Simple and Still is the owner in fee Simple of the following described real estate Situate in Said County, viz; That part of Out lot No. Thirty four (34) in the Subdivision of the South West fractional quarter of Section No. Eleven (11) in Township thirty three (33) North Range No. Three (3) East of the 3^d P.M. which lies between Main Street and Webster Street in the City of Ottawa.

(2) That on the Said 5th day of December A.D. 1860, your orator and his wife Sarah signed what purported to be a mortgage deed of that date, purporting to convey said premises to said Joseph C. Hatheway to Secure to Him the payment of a certain promissory note therein described for the sum of Eight Hundred Eighty nine & 18/100 dollars executed by your orator of Even date with said mortgage & due & payable to the Said Joseph C. Hatheway or order six months after the date thereof a copy of which mortgage deed, together with the acknowledgment thereof is hereto attached marked exhibit "A" and made a part of this bill.

That on the 6th day of December A.D. 1860, the Said Joseph C. Hatheway, pretended under his hand and Seal to assign transfer and set over

Page 3

to the Said Elias C. Hatheway Said note and mortgage a copy of which assignment is hereto attached marked Exhibit "B" and made a part of this bill, but your orator hereby charges that there was no valid consideration for the Said assignment that it is merely colorable, that the Said mortgage was assigned by Said Joseph C. Hatheway to the Said Elias C. Hatheway to defeat any plea of usury that your orator might thereafter interpose to the payment of Said note, and for no other purpose whatever & that the same was done by the Said parties with a full knowledge of all the facts hereinafter stated.

3
That on the 26th day of January ad 1859 your orator & his Said wife, executed and delivered to the Said Joseph C. Hatheway a certain Trust deed of that date conveying to him the real estate above described to secure the payment of the sum of Six Hundred dollars, which sum your orator at that time borrowed of the Said Joseph C. Hatheway, and evidence to be paid by a promissory note of even date with Said Trust deed given by your orator to Said Hatheway for the sum of Six Hundred and Sixty dollars with interest at ten per cent (being the sum actually loaned and Sixty dollars extra interest added into Said note) and due and payable one year after the date thereof.

That on the 5th day of December 1860, more than fifty days before said note in said Trust deed mentioned became due and payable, the said Joseph C. Hatheway voluntarily and without any solicitation on the part of your orator, applied to your orator to have a new mortgage executed upon said premises, saying that he wished to give your orator more time, but for the real object as your orator believes & so charges the fact to be, to obtain from your orator's said wife a specific relinquishment of her right to said premises under the Homestead exemption laws of this State, there being no release or waiver of such right in the Trust Deed aforesaid.

That pursuant to said solicitations the said note and mortgage just above referred to were signed by your orator & his said wife which were taken by the said Joseph C. Hatheway in lieu of the note and Trust deed above mentioned.

(4) Your orator here shows unto your Honor that your orator is a Householder & is owner in fee simple of said premises that he and his family, of which he is the head reside upon and occupy said premises as a homestead, and did so reside upon said premises & was so the owner thereof at the time of the execution of said mortgage that said first mentioned note was not given for the purchase or improvement of said premises

1 2 1 1
but that the only consideration for the same was
in lieu and in satisfaction of the note in said Trust
deed mentioned.

Page 5-

Your orator further shows that said premises
does not exceed in value one thousand dollars.

Your orator further show unto your Honor
that the said Sarah Eyster in no way released
or relinquished her Homestead rights to said
premises in said mortgage deed.

That although said rights may appear
to be released (which they deny) in the certificate
of acknowledgment yet he charges that the
same is not true in fact and that the said
Sarah Eyster never did relinquish her rights
of Homestead in said deed. That the said Thomas
R. Courtney the officer who wrote said certificate
of acknowledgment did not ask her at the time
she signed the same mortgage or at any other
time whether she voluntarily relinquished her
Homestead rights to said premises, nor did he
employ words of like ~~import~~ meaning - That he
did not say anything at all to her in relation
to her Homestead right, at the time she signed
the same or at any other time - That he did
not explain to her the nature of a Homestead
right, and that when she signed said deed
she never intended to relinquish any Homestead
right.

Your orator further shows & charges

that even if the recitals in said certificate of acknowledgment were true, they would not constitute a sufficient relinquishment of said Sarah Cyster's Homestead right to said premises.

Your Orator further Shows that Elias C. Hatheway as pretended assignee of said mortgage has advertised said premises for sale under said mortgage in the Democratic Standard a truly democratic paper printed in the City of Ottawa - said sale to take place on the 8th day of August A.D. 1862, and your orator believes said sale will take place at that time unless enjoined by your Honor

Page 6

In as much therefore as your orator is innominate at the common law, and can only have relief in equity where these and matters of a similar nature are properly cognizable and relievable. He therefore prays that the said Elias C. Hatheway & Joseph C. Hatheway be made party defendants to this bill of complaint, that they be duly summoned to answer the same, their oath to their answer being hereby expressly waived, and that upon the final hearing of this cause the said Joseph C. and Elias C. Hatheway may be forever enjoined from selling said premises during the life of your orator or his wife or either of them or while there shall be any head to this said family, or for such other or further relief

as to equity, may ascertain -

In the meantime your orator prays
for an order for an injunction, to restrain
the said Elias C. Hatheway his agents and
attorneys from selling said premises or in any
way interfering with the same by virtue of said
mortgage until the further order of said court.

And for this your orator prays will ever
pray.
D. J. Cameron Comptrolr Sol.

Page 7

State of Illinois } Samuel Eyster being first duly
La Salle County } sworn deposes and says that
the foregoing bill so far as
the same is stated to be true, is true, and so far
as the same as stated upon information and
belief is true according to the best of their
knowledge information and belief.

Samuel Eyster

Subscribed & Sworn to before me this 4th day of August
A. D. 1862.

J. B. Ford Justice of the Peace.

"Exhibit A"

"This Indenture, made this Fifth day of December
in the year of our Lord one thousand Eight hundred
and Sixty between Samuel Eyster and Sarah his
wife of the County of La Salle and State of Illinois
party of the first part, and Joseph C. Hatheway

Page 8

of the Same County and State Grant of the Second Grant. Ittenueth, That whereas, the Said Grant of the first Grant is justly indebted to the Said Grant of the Second Grant, in the Sum of Eight Hundred Eighty nine & $\frac{17}{100}$ dollars evidenced to be paid by one certain promissory note of Even date herewith by the Said Samuel Eyster in favor of the Said Joseph C. Hatheway and payable six months after date with interest at 10 per cent per annum and damages for non-payment as in said note expressed.

Now, therefore, this Indenture witnesseth that the Said Grant of the first Grant, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the Said promissory note above mentioned; and also, in consideration of the further Sum of one dollar to them in hand paid by the Said Grant of the second Grant at the delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the Said Grant of the second Grant His heirs and assigns forever, all the following described lands situated in the County of La Salle and State of Illinois, viz;

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The South Half of that part of out Lot number thirty four (34) in the Subdivision of the South West fractional quarter of Section number Eleven (11) in Township number thirty three (33) North Range No Three (3) East of the 3^d Principal meridian, which lies between Main Street & Webster Street in the City of Ottawa being about Seventy five (75) feet North and South by ninety nine (99) feet East & West.

To Have and To hold the same, Together with all and singular the Tenements, Hereditaments, Privileges and Appurtenances thereto belonging or in any wise appertaining: And also all the estate, interest and Claim whatsoever in law as well as in equity which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit and behoof. Provided always and these presents are upon this express condition that if the said party of the first part their heirs executors, or administrators shall well and truly pay, or cause to be paid, to the said party of the second part his heirs, executors, administrators or assigns the aforesaid sum of money with such interest therein, at the time and in the manner specified in the above mentioned promissory note according to the true intent and meaning thereof, then, and in that case

these presents and everything herein expressed, shall be absolutely null and void. But it is further Expressly provided and agreed that if default be made in the payment of Said promissory note either of principal or of interest, on the day or days whereon the same shall become due and payable, the whole of said principal and interest, evidenced by the said promissory note in this mortgage mentioned, shall thereupon become immediately due and payable, and this mortgage may be immediately foreclosed to pay the same by the said party of the second part his heirs, executors, administrators or assigns: or the said party of the second part his heirs, executors, administrators, or assigns after publishing a notice in a weekly newspaper printed in the city of Ottawa in said county thirty days before the day of such sale personal notice being waived, may sell the said premises and all right and equity of redemption of the said Samuel Eyster and Sarah Eyster his wife party of the first part their heirs and assigns therein, at public auction at the Court House door in said city of Ottawa to the highest bidder for cash at the time mentioned in such notice. And the said party of the first part hereby specially covenants to and with said party of the second part to waive their right of equity of redemption and

Page 10

Page 11

all right in said premises by virtue of the home-
stead Exemption laws of this State now in
force or which may be in force in this State; and
further agree that they will neither assert
or claim, any such right on the sale of
the property mentioned herein by virtue of
this mortgage. And the said party of
the second part to make, execute, and
deliver to the purchaser or purchasers thereof
a deed or deeds for the premises so sold; and
out of the proceeds of such sale to pay all
costs and expenses incurred in advertising
and selling said premises, also the principal
and interest due on ~~the~~ said promissory note any-
thing herein, or in said promissory note contained
to the contrary notwithstanding.

In witness whereof, the party of the first part
have hereunto set their hands and seals the
day and year above written.

Samuel Eyster 
Sarah Eyster 

State of Illinois }
County of LaSalle } ss I Thomas R. Courtney
Notary Public for the City of
Ottawa in and for said
County in the State aforesaid, do hereby certify that
Samuel Eyster and Sarah Eyster his wife personally
known to me as the persons whose names are sub-
scribed to the above mortgage appeared before me

76-105
Page 12
this day in person and acknowledged that they Signed
Sealed, and delivered the Said instrument of writing
as their free and voluntary act, for the use and
purposes therein set forth. And the Said Sarah
Eyster wife of the Said Samuel Eyster having
been by me examined separate and apart and
out of the hearing of her husband, and the
contents and meaning of the Said instrument
of writing having been by me made known
and fully explained to her, acknowledged
that she had fully and voluntarily executed
the same, and relinquished her dower and
all rights under the Homestead exemption laws
of this State, to the lands and tenements therein
mentioned, without compulsion of her Said husband
and that she does not wish to retract the same.



Given under my hand, this 24.th day of
December A.D. 1860.

J. R. Courtney
Notary Public.

"Exhibit B."

65-124

For a valuable con-
sideration to me in hand paid by Elias G. Hathaway
of the County of La Salle and State of Illinois
the receipt of which is hereby acknowledged
I Joseph C. Hathaway do hereby sell assign
& transfer, unto him the Said Elias G. Hathaway

(13)

all my right, title and interest in and to the within mortgage and the promissory note in said mortgage mentioned. And I do hereby authorize and Empower the said Elias C. Hatheway his heirs and assigns at his or their own proper costs and charges and without recourse on me to proceed at the maturity of the promissory note within named to collect the same with the same power and effect as if the note were still vested in me, and on the payment of said note with interest due, he is further empowered to cancel the within mortgage of record according to law in such case made & provided.

Joseph C. Hatheway 

State of Illinois }
 County of LaSalle }
 Before me Thomas R. Country a Notary Public for the city of Ottawa in the county & State aforesaid, personally appeared Joseph C. Hatheway to me known to be the real person whose name is subscribed to the foregoing assignment of mortgage & who acknowledged that he executed the same voluntarily & freely for the uses and purposes therein set forth.

(13)

Witness my hand & Seal notarial this 26th day of December A.D. 1860.
 T. R. Country Notary Public 

(14)
Let an Injunction issue on Complainant
entering into Bond in the penal sum of
Three Hundred dollars, with good & suffi-
cient Security conditioned as the law directs.

Ottawa Aug't. 5. 1862.

M. E. Hollister Judge

Be it known that on the 5th day of August
1862. Said Complainant filed his bond with
the clerk of Said Court, which said bond is
in the words and figures following. to wit;

"Know all men by these presents that Samuel
Eyster as principal and Thomas Osborn as
Surety are held and firmly bound and Elias
C. Hatheway and Joseph C. Hatheway in the
penal sum of Three Hundred dollars lawful
money of the United States which payment
well and truly to be made we bind ourselves
~~ours~~ heirs, executors & administrators and assigns
jointly and severally firmly by these presents
Sealed with our Seals & dated this 5th day
of August AD 1862.

(14)
The condition of the above obligation
is such that whereas the above bounden
Samuel Eyster has prayed for and obtained
a writ of Injunction from the Judge of the
Circuit Court for the County of La Salle
and State of Illinois returnable to the clerk

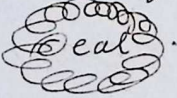
(15)
of Said Court enjoining the Said Elias C. Hatheway
and Joseph C. Hatheway from Selling or in
any manner interfering with the following
described real Estate Situate in the city
of Ottawa in Said County viz; That part
of Out Lot no Thirty four (34) in the Subdivi-
-ion of the South West fractional quarter
of Section No. Eleven (11) in Township No.
Thirty three (33) North Range No three East
of the 3^d P. M. which lies between main Street
and Webster Street in Said City until the further
order of said court. Now if the Said Samuel
Cyster, Shall pay or cause to be paid to the said
Elias C. Hatheway and Joseph C. Hatheway
all such damages as they may sustain by
reason of the issuing of said injunctions
and also such costs and Charges as may
be awarded against the Said Complainant
by the Said Court in case said injunctions
shall be dissolved then this obligation to be
void otherwise to remain in full force and effect.

Samuel Cyster (seal)
Thomas Osborne (seal)

(16)
Be it also remembered that on the 5th day of August
A.D. 1862 a Summons issued out of and under the seal
of Said Court, which is in the words & figures follow-
-ing, to wit;

(16) State of Illinois } The People of the State of Illinois
La Salle County } to the Sheriff of said County Greeting
The People

We Command you, that you Summon Elias C. Hatheway
& Joseph C. Hatheway if they shall be found in your
County, personally to be and appear before the Circuit
Court of said County, on the first day of the next term
thereof, to be holden at the Court house in Ottawa
in said La Salle County on the first Monday of
November next, to answer unto Samuel Eyster & ~~Samuel~~
Eyster in ~~their~~ his certain bill of Complaint against
them filed in the said Court on the Chancery Side
thereof. And have you then and there this, wit
with an indorsement thereon, in what manner
you shall have executed the Same.

Witness A. P. Moore clerk of said Court, and
the Seal thereof, at Ottawa this 5th day of August A.D.
1862.  A. P. Moore clerk,

which said Summons was returned Nov 4, 1862. with
an endorsement thereon as follows - to wit;

(16) "Served by reading this writ to the within named defend-
ants this 7th day of August 1862. and delivering to each
a true copy thereof. E. L. Waterman Sheriff
A. E. Grow Dpty."

STATE OF ILLINOIS, }
 La Salle COUNTY. } SS.

The People of the State of Illinois:

17) To Elias C. Hatheway and Joseph C.
 Hatheway — — — — —

and to your Attorneys, Solicitors, Agents, and Servants, and to each and every of them, GREETING:

WHEREAS, it hath been represented to the Honorable Madison C. Hollister
 presiding Judge of the Circuit Court of La Salle
 County, in the State aforesaid, on the part of Samuel Eyster & Sarah Eyster

Complainants in ~~their~~^{his} certain bill of complaint, exhibited before said Judge, and filed in said
 Court, against you, the said Elias C. Hatheway and Joseph C. Hatheway

to be relieved touching the matters therein complained of. In which said bill, it is stated, among other
 things, that you are combining and confederating with others to injure the complainant, touching the matters
 set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good
 conscience. And the said Judge, having under his hand indorsed upon said bill an order that a Writ
 of Injunction issue out of said Court, according to the prayer of said bill; We, therefore, in considera-
 tion thereof, and of the particular matters in said bill set forth, do strictly command you, the said
 Elias C. Hatheway & Joseph C. Hatheway

(Page 17)

and the persons before mentioned, and each and every of you, that you ABSOLUTELY DESIST AND REFRAIN FROM
 selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or
 in any way, or manner disposing of, or intermeddling with ~~any debts or demands due to~~

~~or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to~~

~~whether in possession, or held by some other person in trust for~~
~~or to use or benefit; and also from selling, assigning, transferring, or in any manner~~
~~incumbering, disposing of, or intermeddling with, any money in coin, bank bills, drafts, or checks~~
~~belonging to~~

~~whether in possession or held by any person in trust for use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action, or chattels held by or by any other person for or in which he has any interest whatever, except when such trust has been created by, or the fund so held in trust has proceeded from some person other than the said~~

the following described Real Estate as set forth in the said Complainants bill of Complaint, viz;

The South Half of That part of Out Lot No. Thirty four (34) in the Subdivision of the South West fractional quarter of Section number Eleven (11) in Township number Thirty three (33) North Range No. Three (3) East of the third Principal Meridian, which lies between main Street & Webster in the City of Ottawa, being about Seventy five feet north & South by 99 feet East & West.

(19)

and you, the said
are hereby prohibited from making any assignment of your property, and from conferring any judgment for
the purpose of giving preference to any other creditor over the said complainant, and from doing any
other act to enable other creditors to obtain your property, until this Honorable Court, in Chancery sitting,
shall make other order to the contrary! Hereof fail not, under the penalty of what the law directs.

To the Sheriff of said County, to execute, and return in due form of law.~

Witness, Absalom D. Moore Clerk of the said
Court and the seal thereof, at Ottawa
in said County, this 5th day of August
A. D. 1862



(19)

A. D. Moore

CLERK.

which writ of Injunction was returned by the Sheriff
with the following endorsement thereon, to wit;

"Served this writ on the within named Elias
C. and Joseph C. Hatheway according to law
and by delivering to each a true copy thereof
this 7th day of August 1862.

E. L. Waterman Shff.
A. E. Snow Svy. "

(20)

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W. D. AD
La Salle County.
Circuit Court,
November Term, 1862.

S. Cyoten Et al

vs.

Elias C. Hatheway
Et al

INJUNCTION WRIT.

Served this Writ on the within named

delivering thereof

day of 186 .

FEES—Service, - - -	\$ 1.00
2 Copy, - - -	1.00
2 Mileage, - - -	1.0
Return, - - -	1.0
Total, - - -	\$ 2.20

W. C. Cameron Sheriff.

Campbell Solr.

Be it further remembered that on the 5th day of ~~April~~^{August} 1862 the defendant filed his certain answer to Complainants bill of Complaint which is in the words following to wit:

State of Illinois } Circuit Court thereof November Term A.D. 1862
La Salle County }

(21) Samuel Egster & Sarah Egster } The separate answers of Elias C. Hatheway
Elias C. Hatheway Etal } one of said defendants. = The said defendant answering says, said complainants did execute and deliver the mortgage & note dated Dec 5. 1860. for the purposes therein expressed as alleged in said bill. That by said mortgage said complainants conveyed the fee simple of said premises to said Joseph C. Hatheway and they only owned the equity of redemption,

This defendant further answering says that part of said bill which alleges that the assignment of said note and mortgage, by J. C. Hatheway to him, was merely colorable and without consideration and for the purpose of avoiding a plea of usury, and that this respondent knew all the facts about said loan of money to Egster is absolutely false, and there is no truth in it whatever, and this respondent at the time he purchased said note & mortgage had no notice, knowledge or information of any defense of any nature or kind whatever that said Egster might claim to have or now to have.

This respondent states the fact to be, that at the time said note & mort. were assigned to him he held the notes of J. C. Hatheway to a large amount, a part of which he loaned to said J. C. Hatheway for said Egster note & mortgage, and at the time knew nothing whatever about any previous contracts or business of J. C. Hatheway with Egster in relation to said note & mortgage or anything else

(21)

(22)
That in regard to said note & mortgage dated 26th Jan'y 1859 he knows nothing but is informed and believes that the statement that said J. C. Hatheway applied to Egster before the same was due to get a new mortgage, is untrue and false. That by the terms of said mortgage the interest was payable semiannually, and said Egster was to pay the taxes and assessments on said premises, That he failed to pay both, and thereby the mortgaged debt became due at the end of six months after date. The taxes of 1859 assessed by said city of Ottawa were unpaid when due, the premises sold and J. C. Hatheway got up the certificate of purchase of Wm. L. Wallace and had the same cancelled, said mortgage or trust deed is recorded in Book 65. page 124 and is made a part hereof

By the terms of said trust deed the whole debt became due upon such failure, and respondent states upon information and belief that upon such failure said J. C. Hatheway did demand payment of said indebtedness or new security. This respondent states on information and belief that the allegations of said bill in regard to the said Sarah Egster not relinquishing her rights of Homestead is absolutely false. And this respondent makes the affidavit of T. R. Courtney hereto attached a part of this answer.

And this respondent states upon counsel of his solicitor that said Homestead law is not applicable to a power of sale mortgage and only applies to a forced sale under a process or decree of court, and even if it does apply, that said release and acknowledgment is sufficient to convey the homestead rights of the grantor and does convey the same. Respondent admits that he has advertised said mortgaged premises for sale as stated in said bill - This respondent further says that he is informed and believes that statement of said bill that said money was not for the purchase of said premises, is untrue, and he refers to the affidavits of William Reddick & J. C. Hatheway and makes them a part hereof

State of Illinois, Elias C. Hatheway on oath says that the statements of said answer states as true are true
Said County, and those stated on information and belief he believes to be true

Elias C. Hatheway

Subscribed & sworn before me this 4th day of August A.D. 1862. A. B. Smith J.P.

On the said 5th day of August 1862, a certain affidavit was filed with the Clerk of said Court in the words and figures following, to wit;

(23)

"State of Illinois } Thomas R. Courtney, first
La Salle County } being duly sworn on oath
Says that he was on the 24th day of December
A.D. 1860. a notary Public of the City of Ottawa
in said County, that some days prior to that time
he was called upon by Samuel Eyster and requested
to take an acknowledgment of a mortgage, made by
himself and wife to Joseph C. Hatheway, that he
delayed the taking of the same for several days
at the request of said Eyster.

On the 24th day of December 1860. he took
said mortgage a copy of which is attached to the
bill Eyster wife vs Elias C. Hatheway Etal and
called at the house of Eyster, his wife and one or
two young ladies were all that was present - he
was informed her husband was at the starch
factory, that he informed the said Sarah Eyster
that he had called on her to take her acknowledg-
ment of said mortgage. He thereupon commenced
reading the same to her, when she objected to affiant
reading the same & she said she understood all
about it and was apparently anxious to ack-
nowledge the same. Thereupon this affiant
stated to Mrs Sarah Eyster that as he was
a sworn officer it was his duty to explain to

her, the contents and meaning, and he did
do so to the best of his ability and did actually
read to her that part of the certificate of
acknowledgment which relates to her. The
matter of the mortgage containing a power of
sale, and release of the Homestead, was freely
talked of and Explained to her and she
(24) seemed to understand the same and be ready
and willing to acknowledge the same and release
her dower and Homestead rights.

Subscribed & Sworn to before me } J. R. Courtney.
this 4th day of August A.D. 1862. }
A. P. Smith J.P. }

Be it remembered that on the 11th day of February
A.D. 1863. the same being one of the days of the
February Term of said Court for the year 1863, the
Complainant filed herein his certain replication
to the answer of said defendants (which said answer
is hereinafter set forth in the bill of exceptions in this
cause), said replication is in the words & figures
following, to wit:

"State of Illinois } And Circuit Court thereof
La Salle County } February Term A.D. 1863

Samuel Eyster }
Elias C. Hathaway } Du Chauncy.
+ Joseph C. Hathaway } The replication

His Solicitor and the defendants by Gray, Avery & Pushnell their Solicitors, and this cause coming on to be heard upon the motion of the defendants to dissolve the injunction herein, and the proofs adduced before the Court. And it appearing to the Court that on the fifth day of December 1860. Said Complainant & his wife Sarah Eyster executed & delivered to Said Joseph C. Hatheway a certain mortgage with power of Sale, on the land & premises described in the bill; that afterwards on the 26th day of December A.D. 1860 Said Joseph C. Hatheway assigned & delivered said mortgage to Said Elias C. Hatheway; (26) that Said mortgage was made due & payable in six months from its date; that after Said mortgage became due Said Elias C. Hatheway advertised the mortgaged premises for sale according to the terms set forth in Said mortgage; that afterwards to wit; on the 5th day of August A.D. 1862, the Complainant filed this bill praying for an injunction to stay the sale of Said mortgaged premises; that an interlocutory injunction was issued according to the prayer of the bill and the sale of Said mortgaged premises stayed accordingly.

And now after having heard the testimony and arguments of Counsel it is ordered, adjudged and decreed by the Court that the defendants motions to dissolve the injunctions so as aforesaid

issued be Sustained, that the bill be dismissed,
and that the defendants Have and recover
of the complainant their costs and Charges by
them herein expended and that they have ex-
ecution therefor.

Complainants counsel now pray an appeal herein
to the Supreme Court, which is granted upon con-
dition that the Complainant in twenty days from
this date file an appeal bond payable to the
defendants in the General Sum of four hundred
dollars with either Jacob Linsinger James W. Ball
or Thomas Osborn as his Security.

The same time is allowed to settle and file
a bill of Exceptions.

It is remembered that on the 7th day of July
A.D. 1863. the complainant files his certain bill
of Complaint exceptions, in the words and figures follow-
ing, viz;

Samuel Eyster
vs
Joseph C. Hatheway
+ Elias C. Hatheway

Bill of Exception

It is remembered that on
the trial of this cause at
the June Term A.D. 1863, of this Court on the
26th day of June A.D. 1863, that being one of
term days of said Court it was agreed by the

Complainant and defendants as follows.

That the answer of Elias C. Hatheway should stand for the answer of both Elias C. and Joseph C. Hatheway.

That the said complainant and his family (consisting of his wife and two daughters) of which he was the head resided upon the premises described in the mortgage deed read in evidence in a dwelling house thereon at the time before, and since the execution of the said mortgage as a home -

(28) That the said premises were about to be sold as set out in said bill.

The said complainant then to maintain the issue on his part offered and read in evidence the answer of Elias C. Hatheway and affidavit of Joseph C. Hatheway for the purpose of showing the consideration of the promissory note in said mortgage deed described and for no other purpose.

By order of Court the master in Chancery took the following oral testimony & proceedings which is hereby made a part of this bill of exceptions -

"
State of Illinois } And Circuit thereof to June Term
La Salle County } A.D. 1863.

Samuel Eyster

Injunction

Elias C. Hatheway &
Joseph C. Hatheway

The following proof has

been taken before me this day.

(The answer of Elias Hatheway stands for both defendants).

(The premises were advertised for Sale as set forth in the Bill.)

Testimony for Complaint.

Lavilla S. Eyster testified as follows:

(291) Am a daughter of Samuel Eyster reside at Ottawa my father lives near Saml Raymonds, he occupies it as a Homestead. I have a Sister & mother living. There is a dwelling House on the premises, cannot give description of property, it is situated on the corner of Clay & Webster Streets. He has lived there six years last fall, and did on the 5th day of December 1860. they made it their home at that time.

John F. Nash = Knows the complainant and where he resides, = mortgage from Eyster to Hatheway shown him - thinks it is the property on which he lives. Knows that he lives on the premises in controversy. Should think the property worth about \$1200. I suppose that the complainant is the head of the family and resides there as such.

Lewis Eyster = If the house is thoroughly finished according to outside appearances the premises would be worth \$1500.

Flavella Eyster recalled -

my father resides there
as the head of a family and has from the
making of the mortgage and before the making
of it up to the present time. He is the head of the family.

Julius Avery = Note + mortgage. Show him -
it is the mortgage of the same property on which
there was a sale to be made.

Answer of Elias C. Hatheway read in Evidence -

Affidavit of J. C. Hatheway read in Evidence -

Complainant here rests his case -

(30)

Defendant introduce mortgage date Dec 5th 1860.
executed by Samuel + Sarah Eyster for \$889.17
and note of the same date and amount made by
Samuel Eyster, both made to Joseph C. Hatheway.

Assignment of the note + mortgage to Elias C.
Hatheway on the 6th of December 1860

~~Affidavit of Thomas R. Courtney offered in~~
~~Evidence also~~ Affidavit of William Reddick
offered in Evidence.

Flavilla Eyster recalled in part of Complainant
I was present when the mortgage was executed by
my mother.

(Objections made on the part of defendants)

to any parol evidence being admitted as regards the acknowledgment of the mortgage)

(All the following testimony subject to exceptions)

(31) Sabina my Sister was also present, I was present when Mr. Courtney first came in to the House, and was there while he stayed in the House. He came to the House in the morning, mother was Sick. He rapped in the door and I went to it, He spoke and said he brought a mortgage to renew the old one. I asked him to read it and he asked mother if she had read the old one, she said she had read it, and she then signed the one Mr Courtney brought. He asked her if she was willing to sign it, she said she was. Before she signed it I wanted my Sister to go after Father and he said that there was no use of that. He did not say a word about mother having a homestead right, nor any thing of the kind. If had said any thing of that kind I should have heard it because I was in the room all the time. He sat at the Table and I sat near him at the same table, He was there from ten to fifteen minutes.

X Ex Mother had just got up when he came and was sitting in a rocking chair.

I did not pass in or out of the room while he (Courtney) was there. He did not ask mother

to hear the mortgage read. any ~~more~~ than he said
it was the same as the old one. mother said
she had heard the old one read. mother did
not say she did not want to hear it read nor
that she did want to - She said she had
heard the old one read and I supposed to have
this one read. and Mr Courtney said there was
no use of reading it; Mr Courtney did not
say to her that it was his duty to explain
the mortgage to her, and to read it. He did
not say that he was a Sworn officer and
that it was his duty to explain it to her.

(32) He did not say that he could not take her
~~acknowledgment~~ without reading it to her
and that it was his duty to explain it. I
got the ink & pen to write with at the request
of my mother. I did not have to go out
of the room to get it. it was on the window
Pur to that morning I had never her mother
& Father say anything about this mortgage
that was the reason I wanted to hear it read
mother did not express any unwillingness
to sign the mortgage she said but a few
words about it. It was to be a newly dated
mortgage the same as the old one. I have never
talked with Father & mother about this suit
nor with any one before or since the commencement
of this suit never had any conversation about it
with any of the family. Father came in the house

and asked me if I would be willing to swear as to what Courtney said. This was just before the Bill was filed - I went up with Father to Camerons office after he asked me that question

I am as confident as that I am here now that Courtney did not read the acknowledgment to mother - I was a very cold morning when Mrs. Courtney came down to our house,

Redirect R. I did not hear Father & Mother say anything about this mortgage before this Bill was filed. I am aged 28 years.

213
Sabina Cyster = I am 15 yrs of age - was present at the time Mr Courtney was at our house as spoken of by my Sister. I heard the conversation - Florida asked Mr Courtney to read the mortgage, he said it was of no use as it was the same as the old one, my Sister told me I had better go after father. Mr Courtney said there was no use of that - Mrs Courtney wrote mother's name and she signed the mark. He did not say anything to her about any homestead right. He did not ask her any questions about signing the mortgage. I was sitting at the breakfast table when he came and remained there during his stay. If there had been anything said by him to mother about a homestead. I would have heard it, he did not say anything as to what constituted a homestead. He was in the

room from 10 to 15 minutes, my mother was sick. She sat in a rocking chair all the time he was there.

X Ex.

They were then 10 or 15 minutes. He came to the door & mother came in & sat down and that took some of the time, it was about 2 minutes after Courtney came in that ~~that~~ mother came out. He said he had brought a new mortgage the same as the old one. There was nothing read or said about dower or Homestead whatever - He did not ask her whether she was willing to execute the mortgage or not. She did not say anything about it.

(37)

Thomas R. Courtney. I am a notary Public. Know complainant & his wife (mortgage shown him). Have seen the mortgage. The acknowledgment thereon was taken by me. About the latter part of Dec. I called at the house of Mrs. Eyster at a time appointed by him when I should call, and I went into the house and was invited to take a seat. I notified Mrs. Eyster that I had called to take her acknowledgment to a new mortgage which Mr. Eyster was giving to her & that way instead of the old mortgage - there was a rambling conversation between Mrs. Eyster & myself about indebtedness and before signing. I informed the lady that

It was a mortgage for the sum of \$887.19, and read the description of the property therein described and told her that I supposed that it was the same place where they were living and that it was what was called a Short mortgage with power to sell in 30 days.

I remember distinctly that I wanted to have her understand what it was and informed her what a Short mortgage was. (It was a mixture of reading and conversation) and by this mortgage that she surrendered the right of Homestead exemption but did not explain to her her rights in regard to Homestead exemption for I did not know at that time that it was my duty, and afterwards I said it was my duty to explain those things, with a mixture of conversation & of reading I explained to her that part of the mortgage setting out the power of Sale and the Homestead exemption. I asked the lady after she signed whether she did the act willingly freely and voluntarily and without the compulsion of her husband, I then took the instrument up and asked her to excuse me for asking such question because being a sworn officer it was my duty to ask such questions and read over the last part of the acknowledgment as my excuse. There was some conversation about the old mortgage but I was desirous of confining the conversation to the new mortgage

(387)

I think there was some desire to hear the old mortgage read and I stated that it was useless, or some such expression. It think it was suggested to send for Mr Cyster and I remarked that Mr Cyster had already signed the new mortgage and that it was not necessary as far as this was concerned. The lady appeared satisfied that she understood it all: (note objected to by ~~complainant~~)

(36) She said it was not necessary to read the whole mortgage, that she understood it all. I stated to her that being a sworn officer I thought it my duty to inform her fully of the nature of the instrument before signing it. There was nothing said in relation to having this mortgage read over I was not requested to read over the new mortgage. Neither of his daughters requested me to read it over I commenced reading the mortgage and the lady said it was not necessary, somebody made the remark that they supposed it was like the old mortgage and that there might be no misunderstanding was the reason why I was so precise in stating that this mortgage was a short mortgage with a right to sell after 30 days public notice and contained a relinquishment of the Homestead exemption.

Court adjourned til tomorrow morning at 9 o'clock.

x Ex

I went down to Mr Cyster at a time named by him, mortgage shown is in my hand writing.

Ques. State whether or not Mr Joseph Q. Hatheway came to you and stated that he had a Trust Deed signed by Mr Eyster + wife conveying the property in question to him or for his benefit which did not release the Homestead and that he wanted you to draft a new mortgage which would release Homestead in language to that Effect? about the time this mortgage was executed? (objected to by deft + objection sustained by the Court to which ruling of the Court the complainant then + there excepted.)

(37) There was somebody suggested that I should read the old mortgage - I don't remember that the young lady asked me to read the new mortgage - She may have done so + I not remember it. I should not have taken any notice of it.

I knew that there was an old instrument in existence but did not know the kind. I do not remember that I had the old mortgage with me, I pursued Mr Eyster in a friendly manner that I would not give the new mortgage to Mr Joseph Hatheway until he Hatheway surrendered up the old one I don't remember that I ever surrendered up to the Trust deed to Hatheway. I think that I have not got it in my possession, the impression is that I did surrender it up but can not recall the time or place.

I don't think ^{that} I am mistaken in there being a request for me to read the old mortgage. I had no intent in deceiving the parties

I am friendly to them -

Ques. State whether or not Mr Joseph C. Hatheway asked you to go down to Mrs Eyster's and get her to sign this mortgage for the Express purpose of obtaining a release of the Homestead and for no other purpose?

I do not think he did.

My recollection is that he did not: He selected the instrument & asked me to fill it up.

I don't remember that Mr Hatheway said anything about the old deeds having any release of the Homestead.

(387) The reason why I had fears that Mrs Eyster would not sign the mortgage was the delay in which Mr Eyster indulged in naming a day for me to go down.

I think I may have had two interviews with Mr Eyster on this subject.

I only stated to Mrs Eyster in a conversational manner that this new mortgage released the right of Homestead Exemption. I did not explain to her the nature of her rights in regard to Homestead exemption. I did not know that it was my duty.

Re direct. Q. State whether or not you understand the law & decisions of the Supreme Court in regard to a woman's rights under the Homestead

exemption law? (Objected to by complt. Sustained by the court + defts then + there excepted).

P. C. Cook. I am an attorney at law. Ives - State whether or not on the 24th day of December 1860, you could have explained to a married woman her rights under the Homestead exemption law as the same are now construed & explained by the Supreme Court (objected to by complt. objection Sustained, and deft. excepted)

(39) State whether or not you think that an accountant not acquainted with the law as a profession was competent to explain to a married woman on the 24th of December 1860, her rights under the Homestead exemption law as construed by the Supreme Court (Objected to by complt, objection Sustained by the Court and defendants excepted)

This was all of the Evidence.

Taken by me on the 26th + 27th days of June A.D. 1863.

master's fees \$5. E. A. Hollister Master in Chancery.

I hereby certify the foregoing to be the all the oral evidence in the case, and that the master's fee sh^d be charged as costs in the case.

W. E. Hollister June. "

The Said Complainant here rested his case.

The Said defendants to maintain the issues on their part offered and read in evidence the following note -

"\$889.¹⁷/₁₀₀.

Ottawa, Illinois 5th December 1860.

Six months after date, for value received, I promise to pay to the order of Joseph C. Hatheway, the Sum of Eight Hundred and Eighty nine dollars and Seventeen cents, with interest at ten per cent per annum; - and if ~~not~~ not paid at maturity. I hereby agree to pay as liquidated damages on the Sum then due, one-and-a-half per cent a month until paid.

Samuel Eyster "

on the back of which are the following endorsements.

"Joseph C. Hatheway"

"Rec'd in the within Sept 6th 1861, One hundred + four (104) Dols. "

They further offered and read in evidence the following mortgage deed + assignment thereof -

This Indenture, Made this Fifth day of December in the year of our Lord one thousand eight hundred and sixty 1860 between Samuel Eyster, and Sarah his wife of the County of LaSalle and State of Illinois party of the first part, and Joseph C. Hatheway of the same County and State party of the second part, **WITNESSETH**, That whereas, the said party of the first part is justly indebted to the said party of the second part, in the sum of Eight Hundred and Eighty nine dollars and Seventeen cents secured to be paid by one certain promissory note of even date herewith made by the said Samuel Eyster in favor of the said Joseph C. Hatheway, and payable six months after date, with interest at ten per cent per annum; and damages for non-payment, as in said note expressed.

Now, therefore, this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said promissory note above mentioned; and also, in consideration of the further sum of one dollar to them in hand paid by the said party of the second part at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the following described lands, situated in the county of LaSalle and State of Illinois, viz: The South half of that part of Out lot number thirty four (34), in the Subdivision of the South West fractional quarter of Section number Eleven (11) in township number thirty three (33) north, and range number three (3) East of the third principal meridian, which lies between Main Street and Webster Street in the city of Ottawa, - being about Seventy five (75) feet - north and south, and ninety nine (99) feet East and West.

(41)

To have and to hold the same, Together with all and singular the Tenements, Hereditaments, Privileges and Appurtenances thereunto belonging or in anywise appertaining: And also all the estate, interest and claim whatsoever, in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit and behoof. PROVIDED, ALWAYS, and these presents are upon THIS EXPRESS CONDITION, that if the said party of the first part, their heirs, executors or administrators shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned promissory note according to the true intent and meaning thereof, then, and in that case, these presents and everything herein expressed shall be absolutely null and void. But it is further expressly provided and agreed that if default be made in the payment of said promissory note either of principal or of interest, on the day or days whereon the same shall become due and payable, the whole of said principal and interest, secured by the said promissory note in this Mortgage mentioned, shall thereupon become immediately due and payable, and this Mortgage may be immediately foreclosed to pay the same by the said party of the second part, his heirs, executors, administrators or assigns; or the said party of the second part, his heirs, executors, administrators or assigns, after publishing a notice in a newspaper printed in the City of Ottawa in said County and State thirty days before the day of such sale, may sell the said premises and all right and equity of redemption of the said Samuel Eyster and Sarah Eyster his wife party of the first part, their heirs and assigns therein, at public auction, at the court house door in said City of Ottawa to the highest bidder, for cash, at the time mentioned in such notice. And the said party of the first part hereby specially covenants and agrees to and with said party of the second part, to waive their right of equity of redemption, and all right in said premises by virtue of the homestead exemption laws of this state now in force or which may be in force in this state; and further agrees that they will neither assert or claim any such right on the sale of the property mentioned herein by virtue of this Mortgage. And the said party of the second part to make, execute and deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold; and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises, also the principal and interest due on said promissory note anything herein or in said promissory note contained to the contrary notwithstanding.

In Witness Whereof, The said party of the first part have hereunto set their hands and seals the day and year above written.

Sealed and Delivered in Presence of

Samuel Eyster

Sarah ^{her} Eyster

mark

STATE OF ILLINOIS, }
COUNTY OF LaSalle } ss.

I, Thomas R. Courtney, Notary Public for the city of Ottawa in and for said County, in the State aforesaid, do hereby certify that Samuel Eyster and Sarah Eyster his wife personally known to me as the persons whose names are subscribed to the above Mortgage, appeared before me, this day, in person, and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth. And the said Sarah Eyster Wife of the said Samuel Eyster having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all rights under the homestead exemption laws of this State, to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand, this twenty fourth day of December A. D. 1860.

T. R. Courtney Notary Public



MORTGAGE.

Samuel Eyster and wife
to

Joseph C. Hatheway
Assigned to
Elias C. Hatheway

STATE OF ILLINOIS, } No. 231
COUNTY OF LaSalle }

I do certify that this Instrument was filed for
Record Jan'y 9th 1861,
at 10 o'clock A.M., and duly recorded in Book
No. 76 of Deeds Pages 104
105, 106, & 107

A. B. Moore CLERK.

For a valuable Consideration to me in hand paid by Elias C. Hatheway of the County of La Salle and State of Illinois, the receipt of which is hereby acknowledged, I Joseph C. Hatheway do hereby sell, assign and transfer unto him, the said Elias C. Hatheway, all my right title and interest in and to the within mortgage and to the promissory note in said Mortgage mentioned; - and I do hereby authorize and empower the said Elias C. Hatheway, his heirs and assigns at his or their own proper cost and charge, and without recourse in me, proceed at the maturity of the promissory note within named, to collect the same, with the same power and effect, as if the note were still vested in me; - and on the payment of said note, with interest due, he is further empowered to cancel the within mortgage of record, according to law, in such case made and provided.

Given under my hand and Seal, this twenty sixth day of December A.D. 1860.

Joseph C. Hatheway

State of Illinois }
County of La Salle } Before me, Thomas R. Courtney, Notary Public for the
City of Ottawa, in the County and State aforesaid
personally appeared Joseph C. Hatheway, to me known to be the
real person whose name is subscribed to the foregoing assignment
of mortgage, - And who acknowledged that he executed the same
voluntarily and freely for the uses and purposes therein
set forth.

Witness my hand and Seal Notarial this twenty
sixth day of December A.D. 1860.

T. R. Courtney

Notary Public

to the reading in evidence of which mortgage deed, complainant then and there objected which objections were overruled by the Court and the complainant excepted thereto.

They further offered & read in evidence the following answer of Elias C. Hatheway =

(43) "State of Illinois } Circuit Court thereof November
La Salle County } Term A. D. 1862,

Samuel Eyster &
Sarah Eyster

"
Elias C. Hatheway Etal

3

The Separate answer
of Elias C. Hatheway one of said defendants,

The said defendant answering says, said Complainants did execute and deliver the mortgage & note dated Dec 5, 1860, for the purposes therein expressed as alleged in said bill.

That by said mortgage said complainants conveyed the fee simple of said premises to said Joseph C. Hatheway, and they only owned the Equity of redemption.

This defendant further answering says that part of said bill which alleges that the assignment of said note and mortgage, by J. C. Hatheway to him, was merely colorable and without consideration

and for the purpose of avoiding a plea of usury, and that this respondent knew all the facts, about said loan of money to Eyster is absolutely false, and there is no truth in it whatever. And this respondent at the time he purchased said note & mortgage had no notice, knowledge or information of any defense of any nature or kind whatever, that said Eyster might claim to have or now sets up.

(44) This respondent states the fact to be, that at the time said note & mortg. were assigned to him he held the notes of J. C. Hatheway to a large amount, a part of which he traded to said J. C. Hatheway for said Eyster note & mortgage, and at the time knew nothing whatever about any previous contracts or business of J. C. Hatheway with Eyster in relation to said note & mortgage or anything else.

That in regard to said note & mortgage dated 26th Jan'y 1859. He knows nothing but is informed and believes that the statement that said J. C. Hatheway applied to Eyster before the same was due to get a new mortgage, is untrue and false. That by the terms of said mortgage the interest was payable semi annually, and said Eyster was to pay the taxes and assessments on said premises. That he failed to pay both and thereby the mortgage debt became due at the end of six months after date. The taxes

of 1859 assessed by Said City of Ottawa were unpaid when due, the premises sold and J. B. Hatheway bot up the certificate of purchase of W. H. L. Hallace and had the same cancelled. Said mortgage or trust deed is recorded in Book 65. page 124 and is made a part hereof.

(45) By the terms of Said Trust deed the whole debt became due upon such failure, and respondent states upon information and belief that upon such failure Said J. B. Hatheway did demand payment of Said indebtedness or new security.

This respondent states on information and belief that the allegations of Said bill in regard to the said Sarah Eyster not relinquishing her rights of Homestead is absolutely false, and this respondent makes the affidavit of J. R. Courtney hereto attached a part of this answer

and this respondent states upon counsel of his Solicitor that Said Homestead law is not applicable to a Power of Sale mortgage and only applies to a forced sale under a process or decree of Court, and even if it does apply that Said release and acknowledgment is sufficient to convey the Homestead rights of the grantors and does convey the same.

Respondent admits that he has advertised said mortgaged premises for sale as stated in said bill.

This respondent further says that he is informed and believes that statement of said bill that said money was not for the purchase of said premises is untrue, and he refers to the affidavits of William Reddick and J. C. Hatheway and makes them a part hereof.

Elias C. Hatheway,

State of Illinois } Elias C. Hatheway on
La Salle County } Oath says that the State-
ment of said answer stated
as true are true and those stated on information
and belief he believes to be true.

(41) Subscribed & Sworn before me this 4.th day of August
A. D. 1862. A. P. Smith

They further offered and read in evidence the following affidavit of Wm Reddick —

"State of Illinois }
La Salle County } William Reddick on oath says
that by deed dated January
26th 1859, and recorded in book 62 page 637 he
conveyed to Samuel Eyster the premises described
in the Bill of Complaint of said Eyster and wife
vs. Elias C. Hatheway Etal. That on that day

He received about Six hundred dollars a part of
~~the about Six hundred dollars a part of~~ the pur-
 chase money. That said Eyster borrowed
 said money to make said payment from Joseph
 C. Hatheway, and said Hatheway at the request
 of Eyster paid said money over to me according
 to my best recollection. And affiant says that
 would not delivered his said deed to Eyster till
 he received said payment.

William Reddick

Subscribed + sworn to before me this 5th day of
 August 1862. A. B. Moore clerk.

(47)

They further offered + read in evidence the following
 affidavit of Joseph C. Hatheway -

"State of Illinois 3
 LaSalle County 3 Joseph C. Hatheway on oath
 Says that he negotiated the
 loan of money mentioned in the bill of Complaint of
 Samuel Eyster + Sarah Eyster his wife -

That about the 10th of January 1859, said Eyster
 applied to him for a loan. Affiant then had no
 means by him to loan and he thereupon conferred with
 his brother Noah C. Hatheway then at Alton in
 said State and from him procured the funds to
 loan Eyster.

That Eyster stated that he wanted said

money to make the last payment of the purchase money of the premises in said bill mentioned to Mr. William Reddick of whom he bought the same and the money was furnished and used for that purpose on the 26th January 1859.

That said William Reddick filed up & made out said trust deed for said Eyster & wife to execute, and also at the same time executed and delivered to Eyster a deed to said premises and affiant upon the receipt of said Trust Deed and note dated Jan'y 26. 1859, delivered to Mr Reddick the amount loaned according to the arrangement with Eyster and Eyster did not handle or receive a dollar of the money.

(248) Said deed of Wm Reddick to Eyster of said premises is dated the same day of said trust deed, is recorded in Book 62, page 637 and made a part of this affidavit - and so affiant says that said money was and said indebtedness is for the purchase money of said premises.

affiant further says that said Elias C. Hatheway is a bona fide assignee of said Mortgage and note for a valuable consideration.

That at the time of said assignment of note & mortgage affiant was indebted to Elias C. Hatheway over two thousand dollars for which he held affiant's notes and that over

\$1200. of that indebtedness is still unpaid,

That said Elias C. Hatheway received said money from the Estate of his father and at the time affiant got said money from Elias he (Elias) was not engaged in any business and loaned some of his funds to affiant

That affiant at the time of said assignment did not inform said Elias any thing about said transaction with himself and Eyster and never did till a short time ago, within one month, and only then when Elias learned that Eyster was threatening to resist the collection of said assigned note & mortgage.

49/ Affiant is in no way interested in said note & mortgage, and he is informed by counsel and believes that he is not legally liable as indorser of said note

He is released from the fact that no suit was instituted on said note against the maker in proper time to render an endorser liable and affiant is as much discharged as though he had an actual discharge as such indorser.

J. C. Hatheway.

Subscribed & Sworn to before me this 4th day of August 1862.

S. H. Raymond Clerk.

This was all the testimony in this cause - The Court renders a decree dissolving said injunction and dismissing said Complainant's bill, to the rendition of which decree said Complainant then and there objected. The Court over ruled

said objections and the complainant excepted
there to.

M. C. Hollister
Judge

(seal)

Be it remembered that on the 17th day of July
A.D. 1863. Said Complainant filed his appeal
bond herein, in the words and figures following
to wit;

(50) " Now all men by these presents that we
Samuel Eyster as principal and James W. Ball
as Surety are held and firmly bound unto Elias
C. Hatheway and Joseph C. Hatheway in the
penal sum of Four hundred dollars lawful
money of the United States of America which
payment well and truly to be made we bind our-
selves our heirs executors and administrators jointly
and severally, firmly by these presents. Sealed with
our seals and dated this sixteenth day of July
A.D. 1863. The condition of the above obligation
is such that whereas the above bounden Samuel
Eyster did on the 5th day of August A.D. 1862,
file in the Circuit Court of La Salle County
State of Illinois on the Chancery Side thereof
his certain bill of Complaint against the said
Elias C. Hatheway and Joseph C. Hatheway
alleging substantially among other things that

the said Elias C. Hatheway was about to unlawfully sell the premises described in said bill by virtue of a certain mortgage deed therein described and asking for an injunction to stay proceedings under said mortgage until the further order of said Court and that the said Joseph C. & Elias C. Hatheway be finally forever enjoined & restrained from selling said premises as set forth in said bill.

th

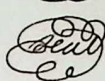
(51)

And whereas on the day & year aforesaid there issued out of the clerk's office - of said Court under the Seal of said Court an injunction unit according to the prayer of said petition restraining the said Elias C. & Joseph C. Hatheway from further selling or interfering with said premises until the further order of said Court.

And whereas at the June Term A.D. 1863. of said Circuit Court such proceedings were had in said cause that a decree was rendered in said Court at the time last aforesaid, dissolving said injunction, and dismissing said Samuel Eyster's bill at his costs from the rendition of which decree the said Samuel Eyster has appealed to the Supreme Court of said State for the - grand division thereof.

Now if the said Samuel Eyster shall prosecute his said appeal without delay and shall pay any & all judgments which may be rendered against him in said cause in case said decree is affirmed and shall pay all costs, interest and damages in case said decree shall be confirmed

then this obligation to be void.

Samuel Eyster 
J. W. Ball 

11

State of Illinois
La Salle County ss. I Absalam J. Moore
Clerk of the Circuit Court

(52)
in and for Said County, in Said State of Illinois,
do hereby certify that the foregoing is a true full
and complete copy of the papers on file and
of the record of proceedings had in said cause,
wherein Samuel Eyster was complainant and
Elias C. Hatheway & Joseph C. Hatheway were
defendants.



Witness my hand and the Seal of
Said Court at Ottawa this 7th day
of April A. D. 1864

A. J. Moore Clerk

C. W. Hook Deputy.

Rec^d of Dwight F. Cameron Twelve dollars
for this record.

Ottawa Apr 7. 1864

A. J. Moore Clerk

C. W. Hook Deputy

And now comes the ^{Appellant} ~~Complainant~~ by D^y
Cameron his ^{att^y} ~~Solicitor~~ and says that in
the recitation of the above decree, there is
manifest error and for cause of error assigns
the following

The court erred in rendering a decree
dissolving said injunction

The court erred in rendering a decree
dismissing complainant's bill

The court erred in refusing to allow the witness
for Defendant Thomas R. Coartney to answer
the first interrogatory asked by complainant
on Cross Examination Page 37 of record

The decree is not signed by the Judge

D^y Cameron

~~Sol^r for Com^r~~

Att^y for Appellant

And now comes ^{Saids} Appeller & says that
there is no error nor manner of
error in said record & proceedings
& prays affirmance of said decrees
& orders aforesaid

Gray Amy & Burdette
per app^r

Samuel Eyster

7

E. C. Hatheway stal

Record & errors

Filed Apl. 20. 1864.
L. Leland
Ch.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

SAMUEL EYSTER

vs.

ELIAS C. HATHEWAY *et al.*

APPELLEE'S BRIEF.

Pages 12 and 13 of the abstract given in full the language of the mortgage and acknowledgment in reference to the homestead.

The acknowledgment says that the officers *made known the contents and meaning* of the mortgage.

The language in the body of the mortgage and in the acknowledgment conforms strictly with the statute and the decisions of the Supreme court.

It is insisted by the appellant that the officer taking the acknowledgment shall explain to the wife *all her legal rights* under the Homestead act, and that the sentence "*that he fully informed her of her rights under the act,*" as expressed in the case of *Vanzant vs. Vanzant*, 23 Ill. 542, should be incorporated in the certificate of acknowledgment. There are no such words in the statute, and we do not think the court meant to lay down a *formula* for an acknowledgment.

A large amount of the conveyancing of this state is done by justices of the peace, and they and notaries take most all acknowledgments. It is a part of the institutions of this country and as old as the common law. Is it to be expected that every country justice should be able to give an erudite lecture on the legal rights of a *feme covert*, to every woman who signs a mortgage, when the very best legal talent of the state have different opinions as to what acts are necessary to be done to alienate those rights? Every man and woman are supposed to know what the law is and their rights and obligations under it, idiots and lunatics excepted. The language in the above opinion is used in giving the reasons of the court for the decision in that case, and could not have been intended as a *sine qua non* in every certificate.

We venture to say that there is not upon record a single deed or mortgage, wherein the certificate states anything whatever about the *legal rights* of the wife being explained to her by the officer.

The homestead act has been of late so often before the court, that we do not deem it necessary to quote the decisions.

II.

There is no allegation in the bill charging either fraud, coercion, or duress. Without these charges no parol testimony is admissible.

Jamison vs. Jamison, 3 Whart. 457.

The case of Swift vs. Castle, 23 Ill. 209, only refers to absolute fraud or coercion.

The testimony of Courtney is full, and explains the whole conversation. Abst. page 9 ; 30 of record.

GRAY, AVERY & BUSHNELL.

CHAS. A. WALKER & BROTHERS

Attention: Your page 3: 30 of record

The testimony of Conway is full and explains the whole con-

dition found in connection

The case of Smith vs. Smith is in 300 only refers to the

condition of the land

unimpaired

There is no question as to the fact that the testimony is

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Filed May 5, 1861
J. L. Smith

Appellor Bicy

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

SAMUEL EYSTER

vs.

ELIAS C. HATHEWAY,
JOSEPH C. HATHEWAY.

} *Appeal from La Salle.*

ABSTRACT OF THE RECORD.

Points and authorities

2 Samuel Eyster, the appellant, who was complainant in the court below, filed his bill in chancery, in the circuit court of La Salle county, on the 5th day of August, A. D. 1862, alleging substantially that he being seized in fee simple of that part of out lot thirty four, (34,) in the sub-division of the south-west fractional quarter of section No. eleven, (11,) in township thirty three (33) north, range three (3) east of the 3d P. M., which lies between Main street and Webster street in the city of Ottawa, in said county, did, on December 5th, 1860, together with his wife, Sarah Eyster, sign what purported to be a mortgage deed of that date, purporting to convey said premises to said Joseph C. Hatheway, to secure payment of a certain promissory note described therein, for the sum of eight hundred and eighty-nine and 18-100 dollars, given by said Eyster to said Joseph C. Hatheway, of even date with mortgage, and due and payable 7 six months after the date thereof. Copy of mortgage and acknowledgement attached to bill and marked Exhibit "A."

3 That on December 6th, 1860, Joseph C. Hatheway pretended to assign said note and mortgage to said Elias C. Hatheway; (copy of assignment attached, marked "B,") but that there was no valid consideration for such assignment; that it was done to defeat any plea of usury that Eyster might thereafter interpose to the payment of said note.

That before the execution of this said note and mortgage, on January 26th, 1859, said Eyster and his wife executed and delivered to said Joseph C. Hatheway, a certain trust deed upon the premises above described, to secure the payment of the sum of six hundred dollars, which sum was borrowed by said Eyster from said Joseph C. Hatheway, and for which he gave his note described in said trust deed.

4 That on December 5th, 1860, more than fifty days before said last mentioned note matured, said Joseph C. Hatheway, without any solicitation on the part of said Eyster, applied to him, Eyster, to have a new mortgage executed upon said premises, pretending that he desired to give Eyster more time, but for the real purpose, as charged in the bill, to obtain from Eyster and his wife a specific relinquishment of her right to said premises by virtue of the homestead exemption laws of this state; there being no such release or waiver in the said trust deed.

That, pursuant to such solicitations, the note and mortgage first referred to were executed, and were taken by said Joseph C. Hatheway in lieu of the said note and trust deed.

That said Eyster is owner in fee simple of said premises; that he and his family, of which he is the head, reside upon and occupy said premises as a homestead, and did so reside thereon, and was so the owner thereof, at the time of the execution of said note and mortgage.

That the said note was not given for the improvement or purchase of said premises; but the only consideration therefor was in lieu and in satisfaction of the said note, so secured by said trust deed.

5 That the premises do not exceed in value one thousand dollars. That said Sarah Eyster, in no way released her homestead right to said premises, in said mortgage deed.

That although such rights may appear to be released by said mortgage and the certificate of acknowledgement, (which is denied by complainant,) he charges that the same is not true in fact.

5 That Thomas R. Courtney, the officer who wrote the certificate of acknowledgement, did not ask said Sarah Eyster at the time she signed the said mortgage deed, or at any other time, whether she voluntarily relinquished her homestead rights to said premises, nor did he employ words of like meaning. That he did not say anything at all to her in relation to her homestead rights, at the time she signed said mortgage, or at any other time. That he did not explain to her her rights under the homestead law, and that, at the time she signed the mortgage, she never intended to relinquish her rights under the homestead laws.

6 That even if the recitals in said certificate of acknowledgement are true, they would not constitute a sufficient relinquishment of Sarah Eyster's rights under the homestead act.

That Elias C. Hatheway, as pretended assignee of note and mortgage, has advertised said premises for sale at public auction. An injunction is asked for to stay proceedings, until further order of court, with prayer for permanent relief.

14 The Judge indorses on bill an order for the issuance for an injunction writ on complainant, Eyster, entering his bond in penal sum of three hundred dollars, with sufficient security, conditioned as the law directs.

Bond in usual form, with Thomas Osborn as security.

16 Summons issued August 5th, 1862, to sheriff of La Salle, and by him duly served August 7th, 1862.

17 Injunction writ issued Aug. 5th, 1862, and served by sheriff of La Salle, to whom it was directed, August 7th, 1862.

21 *Answer of Elias C. Hatheway.*

Admits that Eyster and wife did execute note and mortgage, and that the same was assigned by Joseph C. Hatheway, as alleged; but denies that the assignment was without consideration, and done to avoid a plea of usury as charged.

That, at time note and mortgage were assigned to him, he held the notes of Joseph C. Hatheway to a large amount; a part of

which he traded with said Joseph C. Hatheway for said note and mortgage, and at the time knew nothing about any previous contract or business of Joseph C. Hatheway with said Eyster in relation to said note and mortgage.

- 22 Denies, substantially, that Joseph C. Hatheway solicited a new mortgage from Eyster and wife for the purpose of obtaining a release of her rights under the homestead exemption laws of this state.

That he knows nothing about the note and trust deed, dated 26th January, 1859; but is informed, and believes, that the statement that J. C. Hatheway applied to Eyster before the same were due, to get a new mortgage, is untrue. That by its terms (the trust deed) the interest was payable semi-annually. Eyster was to pay taxes; that he failed to pay both, and thereby the mortgage debt became due at the end of six months after date. The taxes of 1859, assessed by the city of Ottawa, were not paid when due. The premises were sold and J. C. Hatheway bought up the certificate of purchase from Wm. H. L. Wallace, and had the same cancelled.

The answer makes the trust deed a part thereof, but does not attach copy.

By terms of trust deed, the whole debt became due upon such default; and upon information and belief says, Joseph C. Hatheway did demand payment of said indebtedness, or a new security. That he has advertised said premises for sale as alleged.

That said note was given for purchase money, and refers to affidavits of Wm. Reddick and Joseph C. Hatheway, and makes them part of answer. Their affidavits are embodied in the bill of exceptions.

- 23 That said Sarah Eyster did release her rights under the homestead laws; and affidavit of T. R. Courtney is allowed and made a part of answer.

The answer is sworn to by Elias C. Hatheway, and stands, by agreement, as answer for Joseph C. Hatheway also.

Affidavit of Thomas R. Courtney.

That, on 24th December, 1860, he took mortgage, copy of which is set out in bill—he being notary public—and called at
 23 Eyster's house. His wife and two daughters were all that were present. That he informed the wife that he had come to take her acknowledgement to the mortgage. Thereupon he commenced reading it to her. She objected; said she understood it all, and was, apparently, anxious to acknowledge it. He then told her it was his duty, as a sworn officer, to explain to her its contents and meaning, and did so to the best of his ability; and did actually read to her that part of the certificate of acknowledgement which relates to her.

24 That the matter of the mortgage, containing a power of sale and release of homestead, was freely talked of and explained to her, and she seemed to understand the same, and be ready and willing to acknowledge the same, and release her dower and homestead rights.

Replication.

25 Complainant Eyster on the 11th February, 1863, filed general replication.

At June term, A. D. 1863, a trial was had on motion to dissolve the injunction, and the motion to dissolve was sustained,
 26 and complainant's bill was dismissed at his costs.

Complainant prays an appeal, which is granted upon condition of his filing, in 20 days, an appeal bond in penal sum of four hundred dollars, with either Jacob Lininger, James W. Ball, or Thomas Osborn as surity. Same time is allowed to
 27 settle and file bill of exceptions.

Bill of Exceptions.

28 Shows the following agreement. That the said complainant, Eyster, and his family, (consisting of his wife and two daughters,) of which he was the head, resided upon the premises described in the mortgage, in a dwelling house thereon, at the time, before, and since the execution of the mortgage, as a home.

That the premises were about to be sold as alleged in bill.

The complainant, then, to maintain the issues on his part, read in evidence the answer of Elias C. Hatheway, and affidavit of Joseph C. Hatheway, for the purpose only of showing the consideration of the note. Complainant then called Savilla Eyster, who testified as follows:

- 29 *Savilla S. Eyster*.—Am a daughter of Samuel Eyster. Reside at Ottawa. My father lives near Samuel Raymond's. He occupies it as a homestead. I have a sister and a mother living. There is a dwelling house on premises. Cannot give description of property. It is situated on the corner of Clay and Webster streets. He has lived there six years last fall, and did on the 5th day of December, A. D. 1860. They made it their home at that time.

John F. Nash testified for complainant as follows:

Know the complainant, and where he resides. (Mortgage from Eyster to Hatheway shown him.) Think it is the property on which he lives. Know that he lives on the premises in controversy. Should think the property worth about \$1200. I suppose the complainant is the head of the family, and resides there as such.

- 30 *Cross-Ex.*—If the house is thoroughly finished according to outside appearances, the premises would be worth \$1500.

Julius Avery testified for complainant as follows:

(Note and mortgage shown him.) It is the mortgage of the same property on which a sale was to take place.

Complainant here rests.

Defendants then introduced mortgage, date, December 5th, 1860, and note for \$889.17, and assignment of mortgage and note to Elias C. Hatheway, by Joseph C. Hatheway, December 6th, 1860.

- 46 Defendants then offer in evidence affidavit of Wm. Reddick.

- 30 *Savilla Eyster*, recalled on part of complainant.

I was present when the mortgage was executed by my mother.

(All the following testimony subject to exceptions.)

31 Sabina, my sister, was also present. I was present when Mr. Courtney first came into the house, and was there while he staid in the house. He came to the house in the morning. Mother was sick. He rapped on the door, and I went to it. He spoke and said he brought a mortgage to renew the old one. I asked him to read it, and asked mother if she had read the old one. She said she had read it, and she then signed the one Mr. Courtney brought. He asked her if she was willing to sign it. She said she was. Before she signed it I wanted my sister to go after father, and he said there was no use of that. He did not say a word about mother having a homestead right, nor any thing of the kind. If he had said any thing of the kind, I should have heard it, because I was in the room all the time. He sat at the table, and I sat near him at the same table. He was there from ten to fifteen minutes.

Cross-Ex.—Mother had first got up when he came, and was sitting in a rocking chair. I did not pass out and in the room while he (Courtney) was there. He did not ask mother to hear the mortgage read. He said it was the same as the old one. Mother said she had heard the old one read. Mother did not say she did not want to hear it read, nor that she did want to. She said she had heard the old one read, and I proposed to have this one read, and Mr. Courtney said there was no use of reading it. Mr. Courtney did not say to her that it was his duty to explain the mortgage to her, and to read it. He did not say that he was a sworn officer, and that it was his duty to explain it to her. He did not say that he could not take her acknowledgment without reading it to her, and that it was his duty to explain it. I got the ink and pen to write with at the request of my mother. I did not have to go out of the room to get it. It was on the window. Prior to that morning I had never heard father and mother say any thing about this mortgage. That was the reason why I wanted to hear it read. Mother did not express any unwillingness to sign the mortgage. She said but a few words about it. It was to be a newly dated mortgage, the

same as the old one. Have never talked with mother and father about this suit, nor with any one before or since the commencement of this suit. Never had any conversation about it with any of the family. Father came into the house and asked me if I would be willing to swear as to what Courtney said. This was just before the bill was filed. I went up with father to Cameron's office after he asked me that question. I am as confident as that I am here now, that Courtney did not read the acknowledgement to mother. It was a very cold morning when Mr. Courtney came down to our house.

33

Direct Resumed.—I did not hear father and mother say any thing about the mortgage before this bill was filed. Am aged 28 years.

Sabina Eyster, called by complainant.

I am 15 years old. Was present at the time Mr. Courtney was at our house as spoken of by my sister. I heard the conversation. Savilla (Flavilla) asked Courtney to read the mortgage. He said it was of no use, as it was the same as the old one. My sister told me I had better go after father. Courtney said there was no use of that. Mr. Courtney wrote mother's name, and she signed the mark.

He did not say any thing to her about any homestead right. He did not ask her any questions about signing the mortgage. I was setting at the breakfast table when he came, and remained there during his stay. If there had been any thing said by him to mother about a homestead, I would have heard it. He did not say any thing as to what constituted a homestead. He was in the room from ten to fifteen minutes. My mother was sick. She sat in a rocking chair all the time he was there.

34

Cross-Ex.—They were there ten or fifteen minutes. He came to the door, and mother came in and sat down, and that took some of the time. It was about two minutes after Courtney came in, that mother came out. He said he had brought a new mortgage, the same as the old one. There was nothing read or said about dower or homestead whatever. He did not ask her

whether she was willing to execute the mortgage or not. She did not say any thing about it.

34 *Thomas R. Courtney* testified for the defendants as follows:

Am a Notary Public; know complainant and his wife; (mortgage shown him) have seen mortgage; the acknowledgment thereon was taken by me. About the latter part of December I called at the house of Eyster at a time appointed by him when I should call, and I went into the house and was invited to take a seat. I notified Mrs. Eyster that I had called to take her acknowledgment to a new mortgage which Eyster was giving to Hatheway, instead of the old mortgage. There was a rambling conversation between Mrs. Eyster and myself about indebtedness, and before signing I informed the lady that it was a mortgage for the sum of \$887.19, and read the description of the property therein described, and told her I supposed it was the same place where they were living, and that it was what is called a short mortgage, with power to sell in thirty days. I remember distinctly that I wanted to have her understand what it was, and informed her what a short mortgage was, (it was a mixture of reading and conversation,) and by this mortgage that she surrendered the right of homestead exemption, *but did not explain to her her rights in regard to homestead exemption*, for I did not know at that time that it was my duty, and afterwards I said it was my duty to explain those things, with a *mixture of conversation* and reading. I explained to her that part of the mortgage setting out the power of sale and the homestead exemption. I asked the lady after she signed whether she did the act willingly, freely and voluntarily, and without the compulsion of her husband. I then took the instrument up and asked her to excuse me for asking such questions, because, being a sworn officer, it was my duty to ask such questions, *and read over the last part of the acknowledgment as my excuse*. There was some conversation about the old mortgage, but I was desirous of confining the conversation to the new mortgage. I think there was some desire to hear the old mortgage read, and I stated that it was useless, or some such expression. I think it was suggested to send for Mr. Eyster, and I remarked that Mr. Eyster had already signed the new mortgage, and that it was not necessary as far as this was concerned. The lady appeared satisfied that she understood it all.

36 She said it was not necessary to read the whole mortgage, that she understood it all. I stated to her that, being a sworn officer, I thought it was my duty to inform her fully of the nature of the instrument before signing. There was nothing said in relation to having this mortgage read over. I was not requested to read over the new mortgage.

Neither of his daughters requested me to read it over. I commenced reading the mortgage, and the lady said it was not necessary. Somebody made the remark that they supposed it was like the old mortgage, and that there might be no misunderstanding was the reason why I was so precise in stating that the mortgage was a short mortgage, with a right to sell after thirty days' public notice, and contained a relinquishment of the homestead exemption.

Cross-Examined.—I went down to Mr. Eyster's at a time named by him. Mortgage in my hand-writing.

37 *Ques.* State whether or not Joseph C. Hatheway came to you and stated that he had a trust deed, signed by Eyster and wife, conveying the property in question to him or for his benefit, which did not release the homestead, and that he wanted you to draft a new mortgage which would release homestead, or language to that effect, about the time this mortgage was executed. (Objected to by defendants. Objection sustained by court, and complainant excepts.)

There was somebody suggested I should read the old mortgage. I do not remember that the young lady asked me to read the new mortgage. She may have done so and I not remember it. I should not have taken any notice of it. I knew that there was an old instrument, but did not know the kind. I do not remember that I had the old mortgage with me. I promised Eyster, in a friendly manner, that I would not give the new mortgage to Joseph Hatheway until he surrendered up the old one.

I do not remember that I ever surrendered up the trust deed to Hatheway. I think I have not got it in my possession. The

impression is that I did surrender it up, but cannot recall the time or place.

I do not think I am mistaken in there being a request for me to read the old mortgage. I had no interest in deceiving the parties. I am friendly to them.

Ques. State whether or not Joseph C. Hatheway asked you to go down to Mrs. Eyster's and get her to sign this mortgage for the express purpose of obtaining a release of the homestead, and for no other purpose.

38 I do not think he did. My recollection is that he did not. He selected the instrument and asked me to fill it up. I don't think that he (Hatheway) said anything about the old deed having any release of the homestead. The reason why I had fears that Mrs. Eyster would not sign the mortgage was the delay in which Mr. Eyster indulged in naming a day for me to go down. I think I may have had two interviews with Mr. Eyster on the subject.

I only stated to Mrs. Eyster, in conversational manner, that this new mortgage released the right of homestead exemption. I did not explain to her the nature of her rights in regard to homestead exemption. I did not know that was my duty.

Direct resumed.—Question. State whether or not you understood the law and decisions of the supreme court in regard to a woman's rights under the homestead exemption law. (Objected to by complainant, and objection sustained.)

B. C. Cook, for defendants, called.

I am an attorney at law.

39 *Ques.* State whether or not, on the 24th day of December, 1860, you could have explained to a married woman her rights under the homestead exemption law, as construed by the supreme court. (Objected to by complainant, and objection sustained.)

- 39 *Ques.* State whether or not you think that an accountant not acquainted with the law as a profession was competent to explain to a married woman, on the 24th day of December, 1860, her rights under the homestead exemption law, as construed by the supreme court. (Objected to by complainant, and objection sustained.)

This was all the oral testimony.

Defendants then offered and read in evidence the following note:

- 40 \$889.17. OTTAWA, Illinois, 5th December, 1860.
Six months after date, for value received, I promise to pay to the order of Joseph C. Hatheway the sum of eight hundred eighty-nine dollars and seventeen cents, with interest at ten per cent. per annum, and if not paid at maturity, I hereby agree to pay as liquidated damages on the sum then due one and one-half per cent. per month until paid.

SAMUEL EYSTER.

- 41 They then offered and read in evidence the mortgage. That portion of the instrument referring to the homestead is as follows:

"And the said party of the first part hereby specially covenants and agrees to and with said party of the second part, to waive their right of equity of redemption and all right in said premises by virtue of the homestead exemption laws of this State, now in force, or which may be in force in this State, and further agree that they will neither assert or claim any such right on the sale of the property mentioned herein by virtue of this mortgage."

The certificate of acknowledgment thereto is as follows:

"STATE OF ILLINOIS, }
COUNTY OF LA SALLE, } ss.

"I, Thomas R. Courtney, Notary Public for the city of Ottawa, in and for said county in the State aforesaid, do hereby certify that Samuel Eyster and Sarah Eyster, his wife, personally known to me as the persons whose names are subscribed to the

above mortgage, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

"And the said Sarah Eyster, wife of the said Samuel Eyster, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all rights under the homestead exemption laws of this state, to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same. Given under my hand this twenty-fourth day of December, 1860.

"T. R. COURTNEY, Notary Public."

Complainant objects to the reading of mortgage in evidence. The court overrules the objections, and complainant excepts.

- 43 Defendant then read in evidence the answer of Elias C. Hatheway.

Affidavit of Wm. Reddick.

- 46 The defendants then read in evidence the affidavit of William Reddick, which is substantially as follows:

That on 26th January, 1859, he conveyed premises in question to Eyster. That Eyster borrowed \$600 of Joseph C. Hatheway on that day to make the last payment of the purchase money for the premises. Thinks that Hatheway, at Eyster's request, paid him (Reddick) the money.

Affidavit of Joseph C. Hatheway.

- 47 Defendants then read in evidence affidavit of Joseph C. Hatheway, which is in substance as follows:

"That he negotiated the loan mentioned in complainant's bill. That Eyster said he wanted the money to make the last

47 payment of the purchase money for the premises in question to William Reddick, and that the money was used for that purpose on 26th January, 1859. That William Reddick filled out the trust deed mentioned, for Eyster to sign, and at same time executed and delivered to Eyster his deed for the premises; and that Hatheway, upon receipt of trust deed and note, dated January 26, 1859, delivered to Reddick the amount loaned, according to the arrangement with Eyster, and that Eyster did not handle one dollar of the money.

Argues from these facts that said money was purchase money. That Elias C. Hatheway is a *bona fide* holder of note and mortgage, and that he, Joseph C. Hatheway, has no interest in the same.

This was all the evidence in the case.

The court rendered a decree dissolving said injunction, and dismissing complainant's bill; to the rendition of which decree said complainant then and there objected.

The court overruled said objection, and complainant excepts.

ASSIGNMENT OF ERRORS.

The court erred in rendering a decree dissolving said injunction.

The court erred in rendering a decree dismissing complainant's bill.

The court erred in refusing to allow the witness for defendants, Thomas R. Courtney, to answer the first interrogatory propounded by complainant on cross-examination, page 37 of record.

The decree is not signed by the judge.

D. H. Cameron
att'y for appellant

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SUPREME COURT,

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} Appeal from La Salle.

ABSTRACT.

Points & Authorities

D. F. CAMERON,

Attorney for Appellant.

Filed Apr. 22 1864
L. Nelson
CR